

MEETING
MEMO / NOTE DE SERVICE



To: David White	Date: February 2, 2022
From: Mary Simms and Omar Ansari	Time: 1 pm
CC: Stuart Huxley	Location: Teams
Topic: Discussion with OPS Legal Counsel re Trucker Convoy and Possible Injunction	

High Level Summary

We met with Christiane Huneault, Shawn Cleroux, and Micheal Kemberhouse from OPS Legal to discuss the possibility of the City seeking an injunction with respect to the trucker convoy.

Our intention was to obtain details of what kind of injunctive relief OPS required in order to assist in their operations. However, it was difficult to get a clear sense of this. Our impression was that the injunction envisioned by the OPS would be about the removal of vehicles. However, OPS has legal authority under the *Highway Traffic Act* to have illegally parked or stopped trucks ticketed and towed. They are currently restrained not by a lack of legal authority but by risk assessments that show intervention (or at least the step of removing the trucks) to be a very high risk. Even if the City were to obtain an injunction, the OPS would still determine how or whether to enforce the injunction based in part on their risk assessments.

Our understanding was that they were not recommending or requesting that the City seek an injunction immediately, but that they want to keep the discussions and preparations going as an injunction could be one tool that may be helpful in the future. They noted that ultimately it was the City's decision whether or not to seek an injunction.

They were also clear that, should the City decide to seek an injunction, OPS has counsel who will be representing them in the matter to ensure that they retain their discretion in the enforcement of the order and that they would still be guided by their risk assessments in terms of the enforcement of any injunctive relief ordered.

Detailed Summary of Conversation

Christiane noted that there were hopes that the truckers would voluntarily vacate this week after intensive negotiations with the OPS. They had some initial success, but a small group changed their mind and decided to stay. At this time, the parkways have basically cleared and the area of concern is Wellington but the situation is changing day to day and that may not be the case tomorrow.

Currently their operational risk assessments indicate that it would be unsafe for the OPS to attempt to remove the transport trucks from Wellington. In addition to immediate safety concerns to officers, there are also concerns of spin off effects such as the formation of splinter groups and inciting support protests in other areas.

They noted that if the City brought an injunction it would provide the protestors an outlet in which to speak their peace and that if there was a court order at least any actions taken by OPS would be sanctioned by the court. When I pointed out that I don't believe that the court would get involved in sanctioning OPS operational decisions regarding enforcement, Christiane advised that they have been in communications with Kyle Friesen who has had extensive experience with injunctions. [He is a former DOJ lawyer who represented the RCMP in many environmental protest injunctions.] If the City brings an injunction, they will bring Kyle in to review any proposed police enforcement order. They intend to put their own risk assessments before the court and they have them prepared. They want to be sure the OPS will preserve their discretion in their operational decisions.

Also, they noted that they have spoken to Brenda Lucki [Royal Canadian Mounted Police Commissioner] who discussed the experience in Alberta. Brenda also flagged that an injunction may legitimize the group and serve as a rallying point for others.

Christiane noted that they want the protestors to be able to air their grievances and that they are sensitive to the fact that these are protests that may engage *Charter* rights and they are trying to weigh the protestors right to demonstrate. They felt there would be some benefit to any potential *Charter* arguments that the protestors might make being heard by and decided upon by a court in advance.

Ultimately, we were left with the understanding that the OPS do not require any further authority under the law to remove the vehicles – that the impediment at this time is operational and, in particular, the current risk assessments.

We asked what the City obtaining an injunction would do to assist the police given the above. Christiane noted it would be one more tool for the police. We asked if the OPS felt that obtaining an injunction might convince some of the remaining protestors to leave on their own accord. She said it might and noted that it was helpful to the police in the Airport Parkway matter when an injunction was obtained because they had a piece of paper setting out the requirements of the order. I asked if an injunction would be useful for that reason, why doesn't the City obtain one now. She indicated that it was a down the road thing but she also stated that it was ultimately up to us whether to get an injunction. She also noted that the City may want to obtain an injunction so that it can recoup some money through contempt proceedings.

They are willing and anxious to give us information that we might need to bring an injunction. Although they are of the view that injunctive relief would focus on the removal of vehicles, due to the daily changes in the situation on the ground, they can't define the specifics of the order that might be helpful to them in the future. For example, would the order apply only to Wellington Street? They could not be certain because while Wellington is the main issue today the situation may change tomorrow. We were hoping that we would get specific information about the scope of the order they needed operationally, however without an idea of what relief we would be seeking it is hard to know what information we would need in support.

We asked if they had considered closing Wellington and she said that they were not there yet, that we were early on, and that they were keeping all options open. We confirmed that they are aware that there are numerous areas in the City that are not under our jurisdiction and we would likely not be able to get an order that applied to those areas. They are aware of this limitation.

She noted that they only have three vehicles that can tow the transport trucks and so they would only be able to tow three vehicles at a time. They are concerned that the truckers would bleed the brakes, in which case one towing would take upwards of eight hours.

Christiane had to leave for a meeting. We agreed with Shawn to meet again on Monday. They expect that landscape may change significantly over the weekend.